

01 Lieutenant at the Whatcom County Jail as defendants in this action.

02 Defendants now move for summary judgment. Plaintiff, despite having been advised
03 of the summary judgment requirements pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir.
04 1998), has filed no response to defendants' motion. Following a careful review of defendants'
05 motion, and the balance of the record, this Court concludes that defendants' motion for
06 summary judgment should be granted and plaintiff's complaint and this action should be
07 dismissed with prejudice.

08 FACTS²

09 Plaintiff Nathan Goninan was booked into the Whatcom County Jail ("the jail") on
10 December 8, 2008, on a manslaughter charge. (Dkt. No. 18 at 2.) Prior to plaintiff's arrival at
11 the jail, jail officials received information from the Oregon Department of Corrections that
12 plaintiff was an extreme security risk and had violent propensities. (*Id.* at 1.) When plaintiff
13 arrived at the jail on the evening of December 8, he was placed in the segregation unit in order
14 to establish his baseline institutional behavior and to give jail officials an opportunity to make
15 an appropriate classification decision. (*Id.*)

16 Within hours of his arrival, plaintiff broke off the spigot to his sink and flooded his cell
17 by plugging the toilet with a sheet. (*Id.* at 2 and 19.) A subsequent search of plaintiff's cell
18 revealed that a seven inch piece of copper pipe was missing from the sink. (*See id.* at 2, 20, and
19 22.) A further search of plaintiff's cell failed to turn up the missing pipe. (*Id.* at 22.)

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21 ² Plaintiff alleges very few facts in his complaint. Thus, the facts set forth here are
22 taken entirely from the declaration of defendant Wendy Jones. Plaintiff has not disputed any
of these facts.

01 Plaintiff reported to corrections staff that he had swallowed small pieces of copper which
02 ultimately led jail officials to obtain a body cavity search warrant. (Dkt. No. 18 at 2, 19, and
03 22.) Plaintiff was transported to the hospital for x-rays, but the x-rays revealed nothing. (*Id.*
04 at 3.) Plaintiff then told corrections staff that he had flushed the pipe. (*Id.*) Plaintiff also
05 told staff that he knew how to remove other fixtures from his cell and that he was impervious to
06 physical control techniques such as Tasers and OC spray. (*Id.*)

07 On December 29, 2008, plaintiff, who was then apparently housed in isolation,
08 threatened to destroy his cell and deputies decided to relocate him. (*Id.* at 4.) Though
09 plaintiff initially refused to cooperate with the move, he eventually complied. (*Id.*) Once in
10 his new cell, plaintiff began kicking and punching the cell door, injuring his hand in the process.
11 (*Id.*) A Taser was used to gain control of plaintiff, and plaintiff was then placed in a restraint
12 chair. (*Id.*) Plaintiff later managed to slip his arm out of the restraint chair and he attempted
13 to head-butt the deputy who was trying to re-secure his arm. (*Id.*) Plaintiff spit at the deputy,
14 hitting him in the face. (*Id.*) Plaintiff also managed to pull loose from the deputy who was
15 controlling his head and he bit that deputy on the wrist. (*Id.*) Plaintiff eventually calmed
16 down and was removed from the restraint chair. (*Id.*)

17 Because of his behavior, plaintiff was kept under close observation and was kept
18 separate from other inmates. (*Id.*) On January 24, 2009, plaintiff met with Lieutenant
19 Raymond. (*Id.*) Plaintiff agreed during this meeting to maintain certain standards of
20 behavior and, as a result, he was moved to a more favorable housing classification which
21 allowed him a greater degree of freedom. (*Id.* at 4-5.) However, two days later, a cell search
22 revealed pieces of rolled-up paper that were in a form which suggested plaintiff was attempting

01 to create a crude blow gun. (Dkt. No. 18 at 5.) The search also revealed a single lens from a
02 pair of reading glasses which had been sharpened on one side. (*Id.*) These materials were
03 deemed consistent with previous threats made by plaintiff to assault staff and were also
04 considered a violation of plaintiff's agreement with Lieutenant Raymond. (*Id.*) Plaintiff was
05 therefore moved back to a more restrictive housing unit. (*Id.*)

06 Almost a week later, on February 2, 2009, plaintiff and his cell were searched because
07 of suspicions that plaintiff had hidden something in his pants. (*Id.*) The pat search of plaintiff
08 revealed nothing. (*Id.*) However, during the search of his cell, corrections staff discovered
09 that the grout had been removed from around one of the mounting bolts between the bunk and
10 the wall. (*Id.*) Corrections staff also discovered a Wellbutrin pill that was prescribed for
11 plaintiff, but which plaintiff was not allowed to have on his person. (*Id.*) This indicated to
12 corrections staff that plaintiff had been "cheeking" his medications during medication pass, a
13 practice which is deemed a security risk because it enables individuals to accumulate
14 medication to overdose or to trade for favors with other inmates. (*Id.*)

15 On February 12, 2009, corrections staff obtained information from individuals in
16 plaintiff's living unit that he and another inmate were planning an escape. (*Id.*) As a result of
17 this information, corrections staff conducted a search of plaintiff's cell on the morning of
18 February 13, 2009. (*Id.* at 6.) The search revealed that grout was missing from around the
19 window in plaintiff's cell, the sink faucet had been broken off, and an attached copper pipe had
20 been flattened and sharpened. (*Id.*) These discoveries were consistent with what staff had
21 learned about plaintiff's escape attempt and resulted in plaintiff being moved once again to a
22 more restrictive housing unit. (*Id.*)

01 Several days later, jail officials made the decision to impose daily searches of plaintiff's
02 cell and daily strip searches of his person. (Dkt. No. 18 at 6.) This decision was based on the
03 significant security concerns posed by plaintiff's behavior, his continuing threats to staff, and
04 his continuing damage to County property. (*Id.*) Plaintiff was advised that his status would
05 be reviewed monthly and that the frequency of searches would be re-evaluated if he changed his
06 behavior. (*Id.*) Plaintiff's status was reviewed on March 11, 2009, April 8, 2009, May 20,
07 2009, June 17, 2009, July 14, 2009, and August 12, 2009. (*Id.* at 7-10.) The daily search
08 protocol was maintained throughout this period of time as plaintiff demonstrated no sustained
09 improvement in his behavior. (*See id.*) Much of plaintiff's problematic behavior during this
10 period of time involved destruction of County property. (*See id.*) However, plaintiff also
11 continued to threaten corrections staff and he assaulted a staff member on at least one occasion.
12 (*See id.*)

13 On August 25, 2009, plaintiff was transferred to Western State Hospital for a
14 competency evaluation. (*Id.* at 11.) Plaintiff was found competent and was returned to the
15 jail on September 3, 2009. (*Id.*) Upon plaintiff's return to the jail, Lieutenant Raymond
16 reviewed plaintiff's behavior just prior to leaving for Western State, and reports from the
17 hospital concerning his behavior while there, and those reports appeared to show improvements
18 in plaintiff's behavior. (*Id.*) Lieutenant Raymond met with plaintiff and discussed with him
19 the daily searches and how they related to his behavior. (*Id.*) During that meeting, plaintiff
20 agreed to continue his appropriate behavior and Lieutenant Raymond agreed to decrease the
21 frequency of the searches. (*Id.*) Lieutenant Raymond advised plaintiff that any inappropriate
22 behavior would result in a return to daily searches, but that continued improved behavior would

01 result in a further reduction in the frequency of the searches. (Dkt. No. 18 at 11.) On October
02 15, 2009, a status review was conducted and it was decided that daily strip searches would be
03 discontinued, and that searches would only be conducted for specific cause. (*Id.*)

04 DISCUSSION

05 Plaintiff alleges in his complaint that his Fourteenth Amendment right to due process
06 and his Eighth Amendment right to be free from cruel and unusual punishment were violated by
07 daily cell searches and strip searches conducted during the course of his confinement in the
08 Whatcom County Jail in 2009. Defendants admit that they authorized the daily searches but
09 argue that the searches were warranted because plaintiff's threatening and violent actions
10 constituted a threat to the safety and security of the jail.

11 Summary Judgment Standard

12 Summary judgment is appropriate when, viewing the evidence in the light most
13 favorable to the nonmoving party, there exists "no genuine issue as to any material fact" such
14 that "the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A
15 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*
16 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact are those for which the
17 evidence is such that "a reasonable jury could return a verdict for the nonmoving party." *Id.*

18 In response to a properly supported summary judgment motion, the nonmoving party
19 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
20 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
21 existence of the elements essential to his case. *See Fed. R. Civ. P. 56(e)*. A mere scintilla of
22 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling

01 on summary judgment, the court does not weigh evidence to determine the truth of the matter,
02 but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41
03 F.3d 547, 549 (9th Cir. 1994).

04 Due Process

05 Plaintiff alleges violations of both his Eighth and Fourteenth Amendment rights.
06 However, because plaintiff was a pretrial detainee at the time his claims arose, his rights derive
07 solely from the Due Process Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S.
08 520, 535 (1979). Due process requires that a pretrial detainee not be punished prior to an
09 adjudication of guilt. *Id.* at 535. However, while the Due Process Clause protects pretrial
10 detainees from punishment, not every disability imposed during pretrial detention constitutes
11 “punishment” in the constitutional sense. *Id.* at 537.

12 The test to be applied in determining whether particular restrictions and conditions
13 imposed as a result of pretrial detention amount to punishment in the constitutional sense is
14 “whether there was an express intent to punish, or ‘whether an alternative purpose to which [the
15 restriction] may rationally be connected is assignable for it, and whether it appears excessive in
16 relation to the alternative purpose assigned [to it].’” *Demery v. Arpaio*, 378 F.3d 1020, 1028
17 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 538). “For a particular governmental action to
18 constitute punishment, (1) that action must cause the detainee to suffer some harm or
19 ‘disability,’ and (2) the purpose of the governmental action must be to punish the detainee.”
20 *Id.* at 1029. Further, “to constitute punishment, the harm or disability caused by the
21 government’s action must either significantly exceed, or be independent of, the inherent
22 discomforts of confinement.” *Id.* at 1030.

01 The Supreme Court has recognized that “maintaining institutional security and
02 preserving internal order and discipline are essential goals that may require limitation or
03 retraction of the retained constitutional rights of both convicted prisoners and pretrial
04 detainees.” *Bell*, 441 U.S. at 546. The Supreme Court has further recognized that corrections
05 administrators “should be accorded wide-ranging deference in the adoption and execution of
06 policies and practices that in their judgment are needed to preserve internal order and discipline
07 and to maintain institutional security.” *Id.* at 547.

08 Defendants have submitted in support of their motion for summary judgment the
09 declaration of defendant Wendy Jones, the Chief Corrections Deputy at the Whatcom County
10 Jail. Chief Jones states in her declaration that this was the first time she had implemented a
11 daily strip search/cell search protocol for a jail inmate and that she believed the protocol was
12 necessary in plaintiff’s case because of his continued threats and assaultive behavior towards
13 staff, his escape attempt, and his continued destruction of County property. Chief Jones
14 maintains that the searches were always intended to ensure the safety and security of the staff
15 and the facility, not to punish plaintiff, and that the searches would have been discontinued
16 much sooner had plaintiff modified his behavioral patterns. And, in fact, the record reflects
17 that the frequency of the searches was reduced in September 2009 after plaintiff had
18 demonstrated improved behavior, and that the daily searches were discontinued altogether in
19 October 2009.

20 Defendants have demonstrated, through their evidence and arguments, that the daily
21 cell and strip search protocol was implemented in an effort to maintain institutional security and
22 to preserve internal order and discipline. Plaintiff has presented no evidence to rebut any of

01 that submitted by defendants. Accordingly, defendants are entitled to judgment as a matter of
02 law with respect to plaintiff's due process claim.

03 CONCLUSION

04 For the foregoing reasons, this Court recommends that defendants' motion for summary
05 judgment be granted and that plaintiff's complaint and this action be dismissed with prejudice.
06 A proposed order accompanies this Report and Recommendation.

07 DATED this 15th day of July, 2010.

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10 Mary Alice Theiler
11 United States Magistrate Judge
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